EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
V.)	No. 05-CV-329-GKF-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

STATE OF OKLAHOMA'S RESPONSES AND OBJECTIONS TO "DEFENDANT TYSON FOODS, INC.'S JUNE 26, 2008 REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS [SIC]"

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), and responds and objects as follows to "Defendant Tyson Foods, Inc.'s June 26, 2008 Requests for Production of Documents to Plaintiffs [sic]."

I. General Objections

- 1. The State objects to these discovery requests to the extent that they seek the discovery of information that is protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or protection under state or federal law.
- 2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of Defendant Tyson Foods, Inc. ("Tyson"), is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to Defendant Tyson as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for the Defendant

Tyson as it is for the State.

- 3. The State objects to these discovery requests to the extent that they are overly broad, oppressive, unduly burdensome and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.
- 4. The State objects to these discovery requests to the extent that they improperly seek identification of "all" documents for each request. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate "all" documents or each item of responsive information to such discovery requests.
- 5. The State objects to these discovery requests to the extent that the discovery sought is unreasonably cumulative or duplicative.
- 6. The State objects to these discovery requests to the extent that they do not state with the required degree of specificity and particularity what information is being sought to be admitted or denied. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning, requiring the State to guess as to what documents are responsive to the requests.
- 7. The State objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving the issues.
- 8. The State objects to these discovery requests to the extent that they improperly attempt to impose obligations on the State other than those imposed by the Federal Rules of Civil Procedure.
 - 9. The State objects to the instructions set forth in these discovery requests to the

extent that they improperly expand or alter the obligations imposed by the Federal Rules of Civil Procedure. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words.

- 10. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State expressly reserves the right to object to further discovery into the subject matter of any information provided and to the introduction of such information into evidence.
- 11. The State objects to the definition of "You," "your" or "yourself' to the extent that it is intended to mean anything other than the State of Oklahoma. There is only one Plaintiff.

II. Responses

Request for Production No. 1: Please produce all documents reflecting, referring to, or relating to any negotiations, conferences, meetings, workshops, memoranda of understanding, agreements, treaties, or compacts concerning natural resources or water rights between or with the State of Oklahoma and any Indian Tribe or Native American Tribe.

Response to Request for Production No. 1: The State incorporates by reference its general objections set forth above. The State objects that this request is vague and ambiguous, requiring the State to guess as to what documents are responsive to the request, and the State responds to it with the understanding that the request seeks documents relating to negotiations, etc., between the State and Indian Tribes or Native American Tribes concerning sovereign or ownership rights to natural resources or water. The State objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, the work

product doctrine or other applicable privilege or protection. The State also objects to this request in that it seeks "all" documents and therefore is overly broad, unduly burdensome and oppressive. The State further objects to this request on the ground that it seeks documents reflecting, referring to or relating to matters outside of the Illinois River Watershed and, as such, is not only not reasonably calculated to lead to the discovery of admissible evidence (i.e., seeks irrelevant information), but also overly broad, unduly burdensome and oppressive. The State yet further objects to this request on the ground that it seeks documents reflecting, referring to or relating to resources in the Illinois River Watershed in which the State has a quasi-sovereign. parens patriae and / or trustee interest and, as such, is not only not reasonably calculated to lead to the discovery of admissible evidence (i.e., seeks irrelevant information), but also overly broad, unduly burdensome and oppressive. Subject to and without waiving any of its general objections or specific objections, the State responds that the universe of responsive, non-privileged, nonprotected, non-objectionable documents that the State will be producing in response to this Request for Production is identical to the universe of responsive, non-privileged, non-protected, non-objectionable documents that the State will be producing in response to Request for

The State has certain potentially responsive, though not necessarily relevant, documents generated in connection with the Sovereignty Symposia. The Sovereignty Symposium was established by the Oklahoma Supreme Court to provide a forum in which ideas concerning common legal issues of interest to tribal and non-tribal entities could be exchanged in a scholarly, non-adversarial environment. The Oklahoma Supreme Court espouses no view on any of the issues, and the positions taken by the participants are not endorsed by the Oklahoma

Production No. 2, and the State accordingly directs to Defendant Tyson Foods, Inc. to the State's

response to Request for Production No. 2.

Supreme Court or by the State of Oklahoma. Responsive materials generated during the Sovereignty Symposia are available for inspection and copying at the University of Oklahoma College of Law library. Counsel for the State will assist in arranging for the inspection of these responsive documents upon request.

The State reserves the right to supplement this response should additional responsive documents be located.

Request for Production No. 2: Please produce all documents reflecting, referring to, or relating to any negotiations, conferences, meetings, workshops, memoranda of understanding, agreements, treaties, or compacts related to natural resources or water rights in the Illinois River Watershed between or with the State of Oklahoma or you and the Cherokee Tribe.

Response to Request for Production No. 2: The State incorporates by reference its general objections set forth above. The State objects that this request is vague and ambiguous requiring the State to guess as to what documents are responsive to the request, and the State responds to it with the understanding that the request seeks documents relating to negotiations, etc., between the State and the Cherokee Tribe concerning ownership or sovereign rights to natural resources or water. The State objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, the work product doctrine or other applicable privilege or protection. See privilege log, Attachment 1 hereto. The State also objects to this request in that it seeks "all" documents and therefore is overly broad, unduly burdensome and oppressive. The State further objects to this request on the ground that it seeks documents reflecting, referring to or relating to resources in the Illinois River Watershed in which the State has a quasi-sovereign, parens patriae and / or trustee interest and, as such, is not only not

reasonably calculated to lead to the discovery of admissible evidence (*i.e.*, seeks irrelevant information), but also overly broad, unduly burdensome and oppressive. Subject to and without waiving any of its general objections or specific objections, and to the extent not previously made available for inspection and copying by Defendants in this litigation, the State is providing herewith certain responsive documents not protected by attorney-client privilege, the work product doctrine or other applicable privilege or protection that it identifies through a reasonable and diligent search of its records. The State reserves the right to supplement this response should additional responsive documents be located.

Request for Production No. 3: Please produce all documents reflecting, referring to, or relating to the February 2000 legal opinion (including the legal opinion itself) of the law firm of Ryley, Carlock, and Applewhite regarding water rights claims made by the Indian Tribes discussed in the Oklahoma Water Resources Board publication attached hereto as Exhibit A.

Response to Request for Production No. 3: The State incorporates by reference its general objections set forth above. The State objects to this request to the extent it seeks documents protected from discovery by the attorney-client privilege, the work product doctrine or other applicable privilege or protection. The State also objects to this request in that it seeks "all" documents and therefore is overly broad, unduly burdensome and oppressive. The State further objects to this request on the ground that it seeks documents reflecting, referring to or relating to matters outside of the Illinois River Watershed and, as such, is not only not reasonably calculated to lead to the discovery of admissible evidence (*i.e.*, seeks irrelevant information), but also overly broad, unduly burdensome and oppressive. Moreover, even assuming *arguendo* that the legal opinion which is the subject of this request were relevant (which it is not), it is the

subject of the attorney client privilege and common interest privilege and therefore protected from discovery. See privilege log, Attachment 1 hereto.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this May of Owl 2008, I electronically transmitted the above and foregoing pleading to the Clerk of the Courtusing the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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Also on this __ day of May, 2008, I mailed a copy of the above and foregoing pleading to the following:

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ATTACHMENT 1 TO STATE OF OKLAHOMA'S RESPONSES AND OBJECTIONS TO "DEFENDANT TYSON FOODS, INC.'S JUNE 26, 2008 REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS [SIC]"

Privilege Log for Requests for Production 2 and 3

Date and Nature of Document	Author	Is author an attorney?	Recipients	Subject matter of document	Privilege asserted
February 7, 2000 Legal Memorandum	Michael J. Brophy, of Ryley, Carlock & Applewhite	Yes	Dean A. Couch, General Counsel, OWRB and Thomas Scott Jones, Assistant Municipal Counselor, City of Oklahoma City	Water Rights of Choctaw and Chickasaw Nations in Kiamichi River Basin	Attorney Client and common interest privilege re RFP 3
June, 2004 draft Comment to EPA on Cheorkee Nation's Application for Treatment as a State under the Clean Air Act	Modrall Sperling law firm	Yes	Department of Environmental Quality	Cherokee Nation's Application for Treatment as a State under the Clean Air Act	Attorney Client and work product re RFP 2
Undated draft of sub proposition of Comment to EPA on Cheorkee Nation's Application for Treatment as a State under the Clean Air Act	Unsigned, but believed to be the Modrall Sperling law firm	Yes	Department of Environmental Quality	Cherokee Nation's Application for Treatment as a State under the Clean Air Act	Attorney Client and work product re RFP 2

From:

Tolbert, Miles [mtolbert@environment.ok.gov]

Sent: To: Wednesday, May 10, 2006 11:16 PM 'Steve.Thompson@deq.state.ok.us'

Subject:

Cherokee TAS

Larry Starfield says that Cherokee TAS was in fact moving along, apparently because they believed that it wasn't regulatory in nature and so was (1) not subject to the rider and (2) of no real concern to the state.

I have informed him that the requirement for a cooperative agreement with the state applies regardless of the kind of TAS authority being sought. I also told him that we are concerned about TAS determinations of all kinds.

We will discuss more on Friday when I am down there to talk about Tar Creek.

From:

Ed Brocksmith [brocksmi@intellex.com]

Sent:

Tuesday, July 22, 2008 7:33 AM

To:

Charlie Price; Kelly Burch; Gerald Hilsher; Jon Craig; Tolbert, Miles

Subject: Fw: Illinois River testing

A message from the Oklahoma Clean Water Forum Published July 21, 2008 09:46 am -

OSRC conducts water sampling

By TEDDYE SNELL

TAHLEQUAH DAILY PRESS -

When Ed Fite became the administrator of the Oklahoma Scenic Rivers Commission a little over 20 years ago, he set three goals for himself, including providing Illinois River visitors with detailed information concerning swimming conditions.

<a

href="http://ads.cluster01.oasis.zmh.zope.net/oasis/oasis/oasisc.php?s=142&a
mpamp;w=300&amp;h=250&amp;t=_top" target="_top"> <img
src="http://ads.cluster01.oasis.zmh.zope.net/oasis/oasisi.php?s=142&amp;w
=300&amp;h=250&amp;t=_top" border="0" width="300" height="250">

Today, Fite is finally able to conduct the water sampling required to provide that information.

"The OSRC received a 40 percent cut in state funding back in the 1990s," said Fite. "Unfortunately, that money has never been restored to our budget."

A few years ago, the OSRC received \$1.1 million in gifted money from the poultry industry, and the OSRC has earmarked a portion of that to conduct water testing.

"We're using that to continue our ambient water testing program to produce educational information in layman's terms that the average citizen concerned about water quality will be able to read," said Fite. "Cabinet Secretary Miles Tolbert has also done two things: provided \$625,000 for a riparian effort in the watershed, and provided money from the EPA for water sampling."

Fite has been taking water samples twice per week from eight points in the basin: one at Barron Fork, one at Flint Creek and six other sites within the Illinois River proper.

While some may believe the effort was led due to the state's lawsuit against the poultry industry, Fite said nothing could be further from the truth.

"The testing we're doing has nothing in relation to the poultry suit," he said. "This is something I have always wanted to do, and now I'm doing it."

Fite said other education efforts include a "do" and "don't" list for water recreation available on the OSRC's Web www.oklahomascenicrivers.net.

"Back in the '60s, parents told us what to do when we swam outside," said Fite. "Including wearing ear plugs and nose plugs, not swimming immediately after eating and so forth. Some of that seems to have been lost along the way, and we're just reminding people what - and what not - to do."

While the testing has provided some valuable information, Fite said that, due to inordinate amounts of rain this summer, the information may be a little skewed.

Fite's testing looks primarily at two types of bacteria: E. coli and enterococci.

"When the E. coli number is less than 236, we know we have optimum conditions for water recreation," he said. "From 237 to 575, the river is more or less under a yellow light, meaning people need to take certain precautions. If they have open cuts or scrapes, it may be best not to swim.

Above 575, we would issue a warning that people should not be swimming in the river."

Similar gauges are being set up for enterococci, said Fite.

"On Wednesday, all samples indicated we were within the safe levels," he said. "However, last weekend when the river was up, we were not."

OSRC Commissioner and Save The Illinois River Inc. member Ed Brocksmith believes that by eliminating poultry waste, the state would make great strides in improving water quality.

"Basically, if the Tulsa Federal Court judge would grant the state's request for a preliminary injunction on poultry waste application, we might just see a big improvement, " he said. "Court testimony by state witnesses indicated that the bacteria levels would drop within weeks, and that in months, bacteria from poultry waste would no longer be a problem in the watershed."

STIR member Kathy Tibbits also supports Fite's efforts in sampling.

"I'm all for sampling," she said. "But I also think the Oklahoma Water Resources Board needs to solve its 303(d) problem. OWRB reports that in Oklahoma, about 10,000 miles of rivers and streams are on the impaired waters list. Oklahoma is working on a water plan right now, and everyone who wants the pollution stopped can ask OWRB to enforce strong prevention."

Tibbits indicated the Cherokee Nation also has water rights and citizens should ask the OWRB to share the regulatory load.

"Cherokee Nation could set and enforce strong pollution prevention, if OWRB agreed," she said. "Everyone should send a letter to OWRB's Web site to let them know Oklahoma citizens want healthy, safe recreation waters as a priority, and ask OWRB to agree to 'state' status for Cherokee Nation under the Clean Water Act."

Ask a friend to join the OK Clean Water Forum

This email was sent to: brocksmi@intellex.com

EASY UNSUBSCRIBE click here: http://topica.com/u/?a2iT6H.a2tddR.YnJvY2tz <http://topica.com/u/?a2iT6H.a2tddR.YnJvY2tz>

Or send an email to: oklahomawater-unsubscribe@topica.com

For Topica's complete suite of email marketing solutions visit:

http://www.topica.com/?p=TEXFOOTER <http://www.topica.com/?p=TEXFOOTER>

Outline of Proposed Environmental Compact Between

the Cherokee Nation and the State of Oklahoma

I. Purpose:

To recognize the sovereign status of the State of Oklahoma and the Cherokee Nation while ensuring the protection of the environment and the preservation of a unified regulatory system.

II. Media Covered:

The proposed compact would cover the regulation of and water pollution and waste management under the following federal statutes: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Atomic Energy Act, and the Solid Waste Disposal Act.

III. Treatment as State

The state will support and facilitate to the fullest extent possible any application by the Tribe to the Environmental Protection Agency for treatment as a state. While this compact remains in effect the Nation shall not seek treatment as a state for any land other than tribally-owned trust land.

III. Standard Setting and Rule Making:

A. General

The Nation will adopt the State of Oklahoma's standards and rules as its own and will periodically update its rules to reflect changes in State law.

The State will provide the Nation with notice of all proposed changes in its air quality or water quality standards as well as any changes to its administrative rules dealing with air or water quality or waste management. At the Nation's request, the representatives of the relevant state environmental agency will confer with the Nation's representatives to seek to resolve any concerns the Nation may have over the proposed rules.

In the event that the Nation desires to adopt a standard or rule that differs from state law it shall first confer with the State. If, after such conferral, the state objects to the Nation's proposed standard or rule the parties will submit the issue to arbitration.

B. <u>Dispute Resolution</u>

The arbitrator will uphold the Nation's proposed standard if it is shown by clear and convincing evidence that the change in standard is necessary to support a stream's beneficial use. The arbitrator will uphold the Nation's proposed standard or rule if it is shown by clear and convincing evidence that the change will neither negatively impact environmental quality on non-tribal lands nor impose an economic hardship in areas of Oklahoma outside tribal lands.

C. <u>Culturally Significant Waters</u>

The State will establish and maintain a list of "culturally significant waters". By virtue of entering into this compact, the Nation will be entitled to propose the listing of a waterbody located anywhere within its historic boundaries. The determination of what action to take in response to such proposed designation as well as what additional protections to provide to such a waterbody, if any, shall be committed to the State's discretion.

IV. Permitting and Enforcement:

The Oklahoma Department of Environmental Quality will serve as the Cherokee Nation's agent for purposes of environmental permitting and enforcement for those lands under the Nation's jurisdiction. The Department of Environmental Quality will keep the Nation informed as to the progress of such permitting and enforcement and will permit it a reasonable opportunity to observe the permitting and enforcement procedures.

Through cross-deputization, the peace officers of the State and Nation will be authorized to make arrests for environmental crimes committed on, or in the vicinity of, tribal land.

V. Monitoring:

The State shall make its beneficial use monitoring program and other monitoring data available to the Nation and the Nation shall make its monitoring data available to the State.

VI. Duration:

The proposed compact would remain in effect indefinitely. After fifteen years either party may withdraw from the compact with written notice to the other party. Such notice will be effective five years after it has been given.

Outline of Proposed Environmental Compact Between the Cherokee Nation and the State of Oklahoma

I. Purpose

To recognize the sovereign status of the State of Oklahoma and the Cherokee Nation while ensuring the protection of the environment and the preservation of a unified regulatory system.

II. Media Covered

The proposed compact would cover the regulation of air and water pollution and of waste management under the following federal statutes: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Atomic Energy Act, and the Solid Waste Disposal Act.

III. Treatment as State

The State will facilitate to the extent possible an application by the Tribe to the Environmental Protection Agency for treatment as a state. While this compact remains in effect the Nation shall not seek treatment as a state for any land other than tribally-owned trust land. In the event the compact is terminated, both parties retain the right to assert or to challenge the assertion of jurisdiction over any given area.

IV. Standard Setting and Rule Making

A. General

The Nation will adopt the State of Oklahoma's standards and rules as its own and will provide for their automatic incorporation by reference in the event they are amended.

The State will provide the Nation with notice of all proposed changes in its air quality or water quality standards as well as any changes to its administrative rules dealing with air or water quality or waste management. At the Nation's request, the representatives of the relevant state environmental agency will confer with the Nation's representatives to seek to resolve any concerns the Nation may have over the proposed rules.

In the event that the Nation desires to adopt a standard or rule that differs from state law it shall first confer with the State. If, after such conferral, the state objects to the Nation's proposed standard or rule the parties will submit the issue to arbitration.

B. Dispute Resolution

The arbitrator will uphold the Nation's proposed standard or rule if it is shown by clear and convincing evidence that the standard or rule is necessary to advance an important interest of the Nation and will neither negatively impact environmental quality on non-tribal lands nor impose an economic hardship in areas of Oklahoma outside of tribal lands. In addition, any changes in water quality standards must be necessary to support a water body's designated beneficial use.

C. <u>Culturally Significant Waters</u>

The State will provide for the recognition of "culturally significant waters". By virtue of entering into this compact, the Nation will be entitled to propose the designation of a waterbody located anywhere within its historic boundaries. The determination of what action to take in response to such proposed designation as well as what additional protections to provide to such a waterbody, if any, will be committed to the State's discretion.

V. Permitting and Enforcement

The State will serve as the Cherokee Nation's designated agent for purposes of environmental permitting and enforcement for those lands under the Nation's jurisdiction. The State will keep the Nation informed as to the progress of such permitting and enforcement and will permit it a reasonable opportunity to observe the permitting and enforcement procedures.

VI. Monitoring

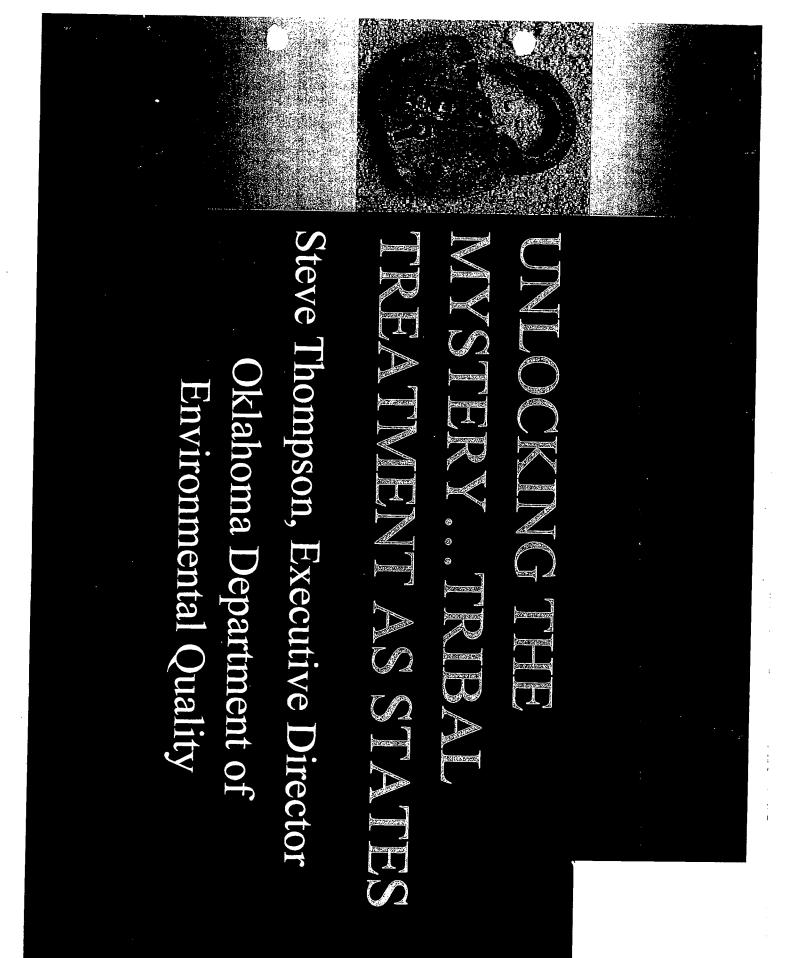
The State will make its beneficial use monitoring program and other monitoring data available to the Nation, and the Nation will make its monitoring data available to the State.

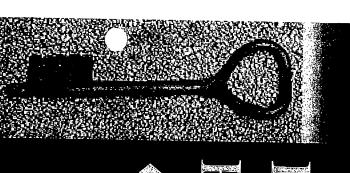
VII. Duration

The compact will remain in effect indefinitely. After twenty years either party may withdraw from the compact with written notice to the other party. Such notice will be effective five years after it has been given.

VIII. Judicial Review

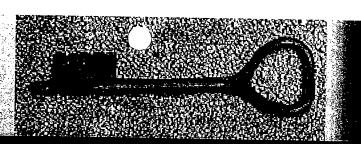
Actions to enforce this compact may be brought in either federal or state court.





- The major component is regulatory surety
- Limited regulatory entities
- Regulatory certainty
- Regulatory consistency
- appropriate input into rulemaking





• All federal environmental

designation. tribe receives Treatment as a State (TAS) All federal environmental statutes authorize tribal administration of programs when the

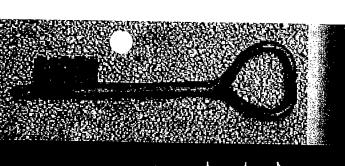


No tribe has been authorized to ad

najor environmental program in Oklahoma

nister a

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Legion 6 Dicatons Penance Wit

- Pawnee Nation
- Water Quality Standards
- 401 Certification
- Quapaw Tribe
- Water Quality Standards
- Cherokee Nation
- Clean Air Act (partial program)



Decision Maker EPA Region 6 Admi

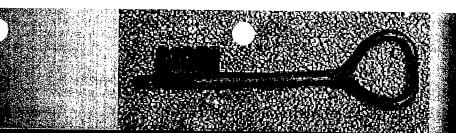
nstrator makes the

DEPARTMENT OF ENVIRONMENTAL QUALITY

EFO

January 22, 20<u>04</u>

lanuary 22, 2004



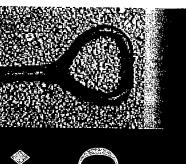
Jecision Chiera

- The tribe must demonstrate these items to be eligible for program authorization:
- Must be federally recognized

Have a governing body with substantial duties

- Is "reasonably expected to be capable"
- Authority to regulate the program
- Statement by tribe's attorney or other official
- Map or legal description of the area over which the tribe asserts authority

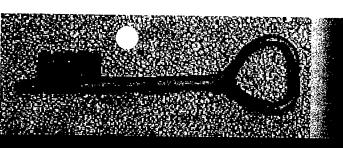




DIGER OF AUTHORIZATION

- EPA has no specified order of events
- Pawnee Tribe sought TAS first then developed drafted WQS
- Quapaw Tribe developed draft WQS first and sought TAS second
- WQS could be developed today with TAS sought tomorrow
- Confuses comment opportunity on WQS
- related to tribal boundaries not technical issues EPA allows public input only from states on issues

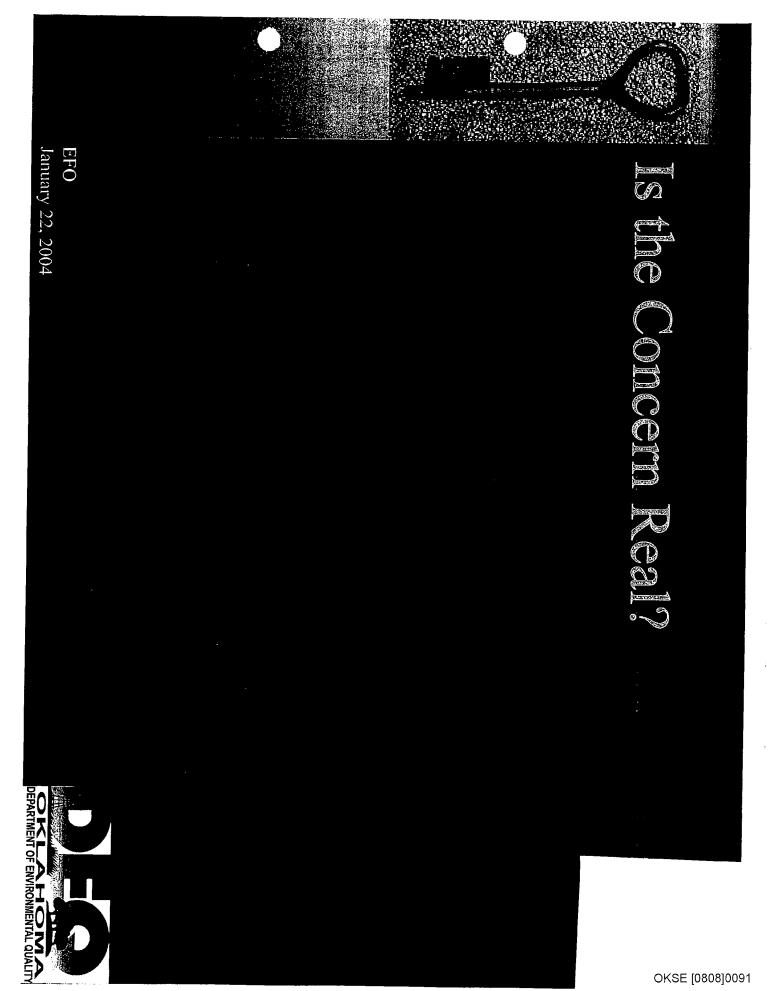


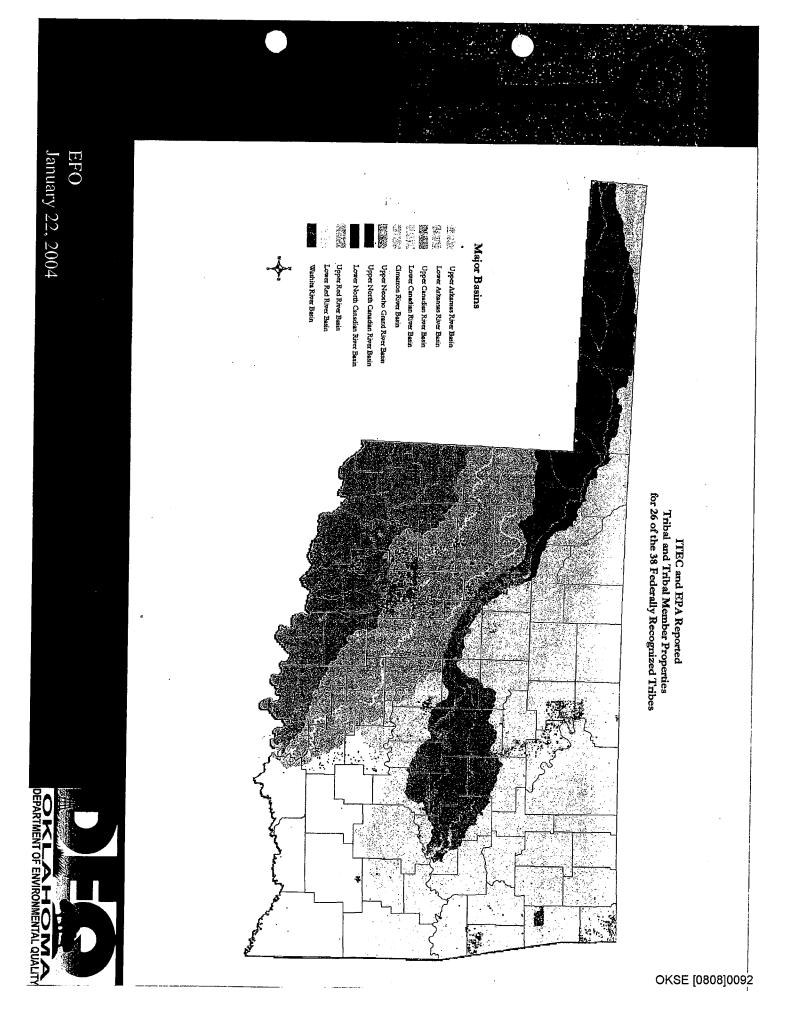


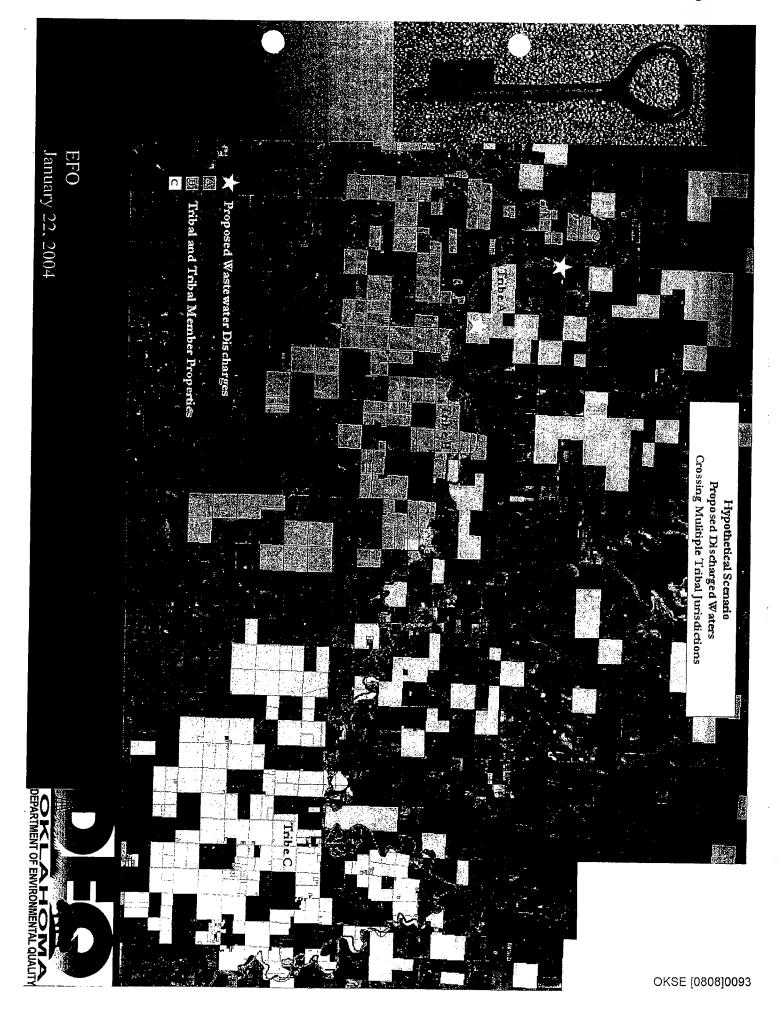
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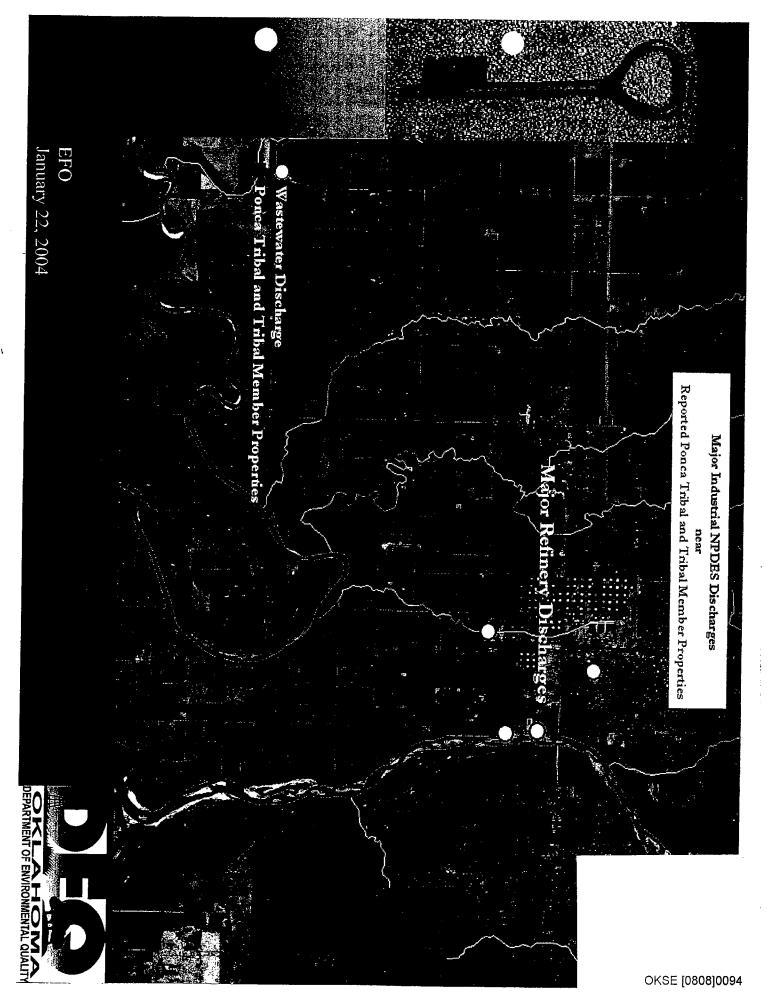
- Case law seems to support EPA granting Treatment as States for air and water programs on reservation lands.
- It is uncertain how this case law will apply to the checkerboard ownership of Indian dependent Indian Communities. tribal allotments, individual allotments and land in Oklahoma, which could include

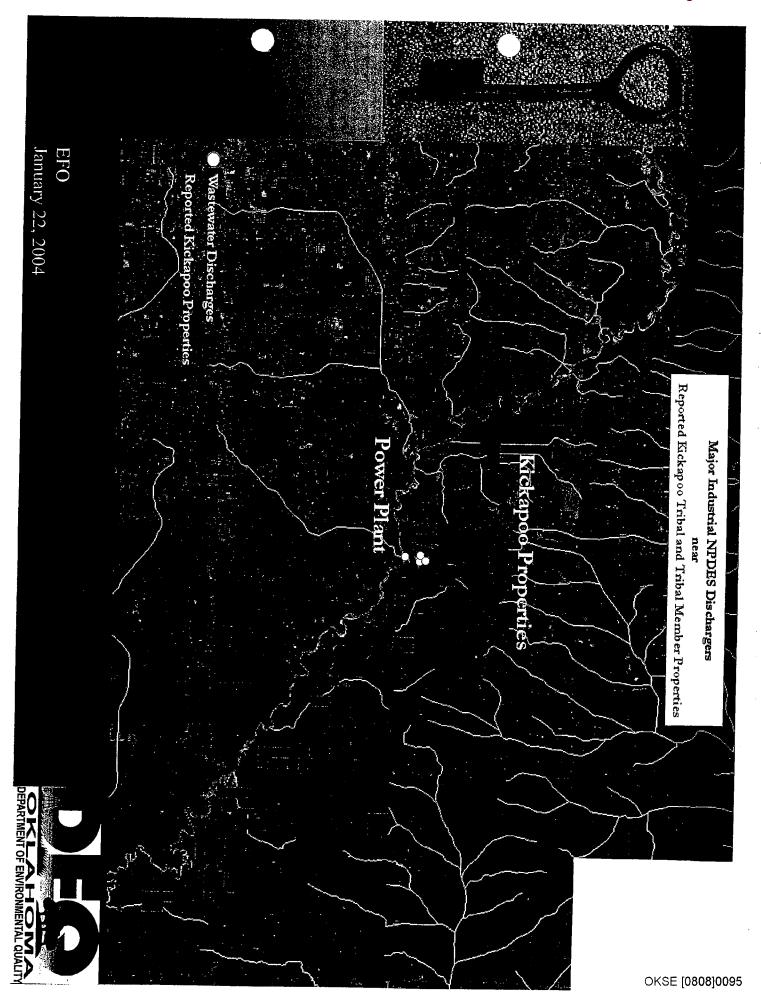


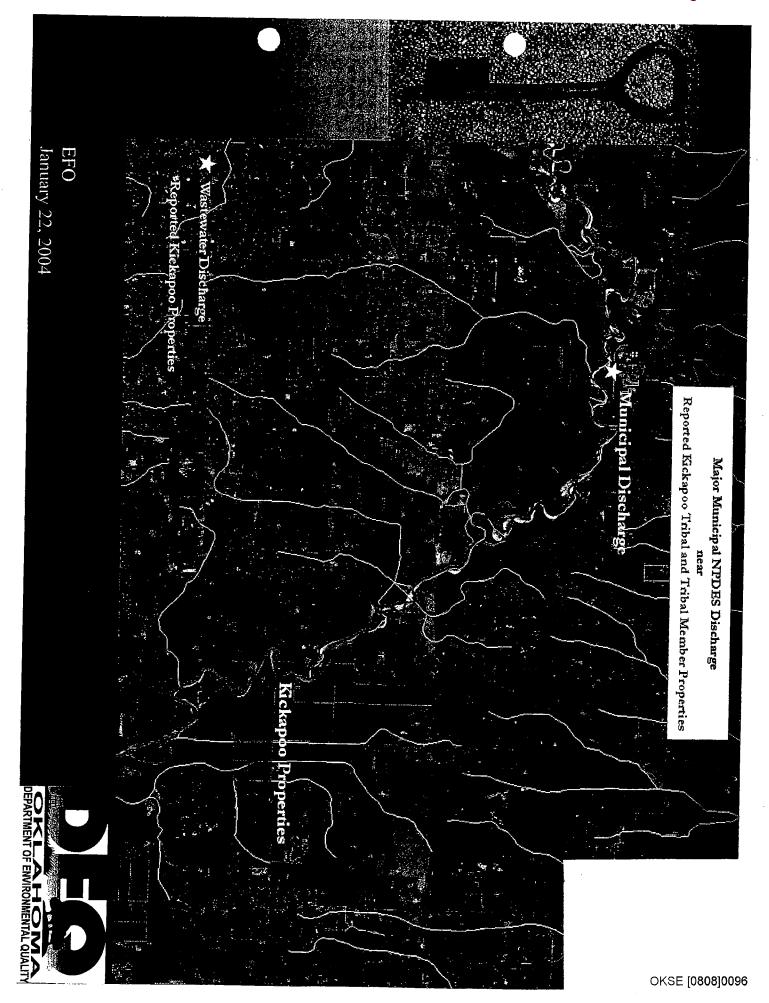


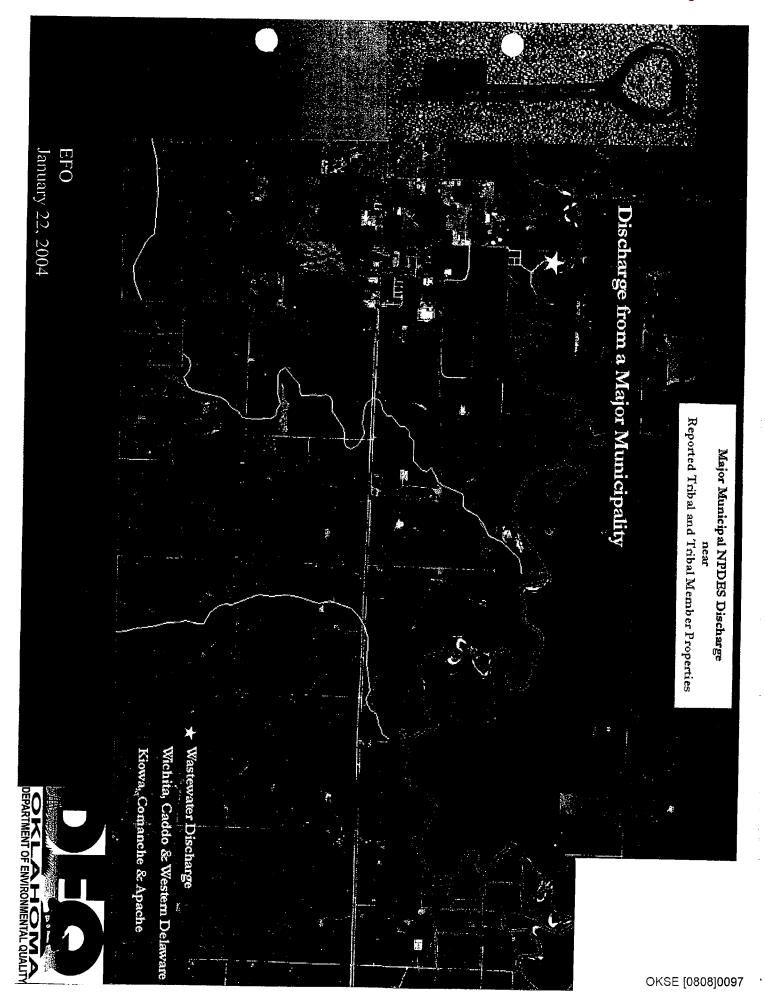


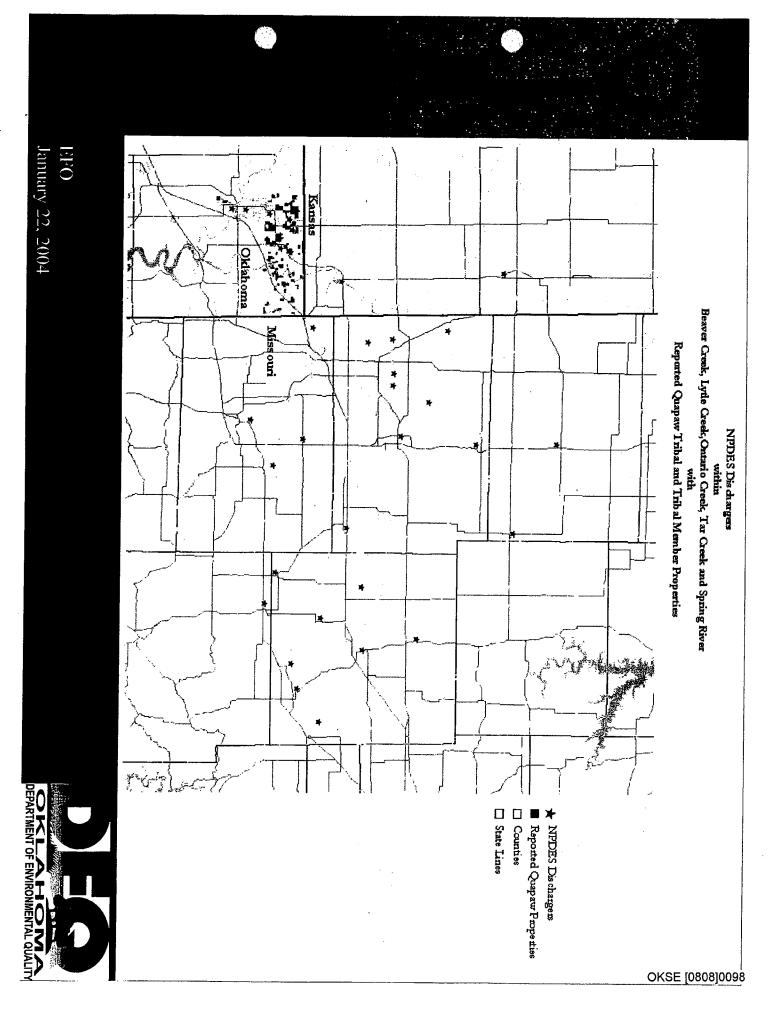












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AUG-24-2004 10:48 FROM:

TO: 14055308900



CHEROKEE NATION

P.O. Box 948 Tahlequah, OK 74465-0948 918-456-0671 Chad "Corntassel" Smith OlfGI Principal Chief

Joe Grayson JLOW JOHN Deputy Principal Chief

August 19, 2004

Lieutenant General Robert B. Flowers, Commanding, Executive Office. Headquarters US Army Corps of Engineers 441 G. Street, NW Washington, D.C. 20314-1000 Telephone (202) 761-0660

Re: Assignment of Water Storage Contract for Tenkiller Reservoir, Oklahoma, to Cherokee Nation

Dear Lieutenant General Flowers:

The Cherokee Nation is requesting your assistance in resolving an issue involving the Tulsa District Office and an alleged "policy" of the U.S. Army Corps of Engineers (COE). The District Office's position appears to signal a major reversal in the federal government's policy to engage in government to government relations with tribes and respect tribal sovereignty.

Enclosed you will find copies of previous correspondence on this issue. To summarize, on March 8, 2004, Sequoyah Fuels wrote a letter to the Tulsa District office of the U.S. Army Corps of Engineers (COE) requesting assignment to the Cherokee Nation of Contract No. DACW56-70-C-0083 for Tenkiller Ferry Reservoir water storage. On March 23, 2004, Larry D. Hogue responded on behalf of the COE stating that "...policy on transferring or entering into a water storage contract is that the entity obtaining the storage must have a valid water right from the appropriate state agency...". The Cherokee Nation wrote back on April 20, 2004, asserting water rights that pre-existed statehood. There has been no response to our letter from the Tulsa District Office.

The delay in approving this assignment is detrimental to the people (both tribal and non-tribal citizens) in this region of Oklahoma, as any delay hampers economic growth. This water is needed now, and the continued uncertainty must be resolved so the Cherokee Nation can move forward, in cooperation with other interested parties, to insure progress in distributing drinking water to those in need.

See, e.g., Department of Defense American Indian and Alaska Native Policy dated October 20, 1998.

TO: 14055308900

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Not only does Cherokee Nation wish to obtain prompt resolution of this matter, but there are also others with valid state water permits and important conservation interests who have an interest in seeing this issue clearly and immediately resolved.

We have reached a basic understanding as to the beneficial uses of this water with the Sequoyah County Water Association and the Oklahoma Department of Wildlife Conservation. We want to work with Sequoyah County Water Association to distribute this water where it is needed most by people in rural areas. We also intend to work with the Oklahoma Department of Wildlife Conservation to ensure the continued health of an important downstream trout fishery that is a major tourist attraction. Our combined efforts will ensure that this water provides the greatest benefit to this region.

Cherokee Nation requests a meeting to discuss this further. Please contact Ms. Casey Ross-Petherick at the Cherokee Nation Washington Office, telephone number (202)393-7007, to schedule a meeting at your earliest convenience.

Respectfully Yours,

Chadwick Smith Principal Chief

TO: 14055308900

P:4/5

cc: The Honorable Brad Carson
U.S. House of Representatives
317 Cannon House Office Building
Washington, D.C. 20515

The Honorable John Sullivan U.S. House of Representatives 114 Cannon House Office Building Washington, D.C. 20515

The Honorable Don Nickles 133 Hart Senate Office Building Washington, D.C. 20510

The Honorable Jim Inhofe 453 Russell Senate Office Building Washington, D.C. 20510

Ross Swimmer, Special Trustee
Office of Special Trustee for American Indians
Department of Interior
1849 C. Street, NW
Washington, D.C. 20240

The Honorable Aurene Martin, Deputy Assistant Secretary- Indian Affairs
Bureau of Indian Affairs
1849 C Street NW
MS: 4141-MIB
Washington, DC 20240

Colonel Robert L. Suthard, Jr.
Tulsa District U.S. Army Corps of Engineers
1645 S. 101st East Avenue
Tulsa, OK. 74128-4609

John Ellis, President Sequoyah Fuels Corporation P.O. Box 610 Gore, OK 74435

Ralph Bird, CEO and Chairman of the Board Sequoyah Fuels P.O. Box 610 Gore, OK 74435

T0:14055308900

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Garner Garrison, President, Board of Directors Sequoyah County Water Association PO Box 627 Sallisaw, OK 94955-0627

Jim Burroughs, NE Region Fisheries Supervisor Oklahoma Department of Wildlife Conservation Rt 1, Box 75B Porter, OK 74454

Kim Erickson, Chief Fisheries Division
Oklahoma Department of Wildlife Conservation
P.O. Box 53465
Oklahoma City, OK 73152-3465

Casey Ross-Petherick, Legislative Officer Cherokee Nation Washington Office 126 C. Street, NW Washington, D.C. 20001